

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BRIAN WHITAKER,

No. 2:22-cv-00195 WBS JDP

Plaintiff,

v.

RUBIO'S RESTAURANTS, INC., a
Delaware Corporation,

Defendant.

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STATUS (PRETRIAL SCHEDULING) ORDER

After reviewing the parties' Joint Status Report, the court hereby vacates the Status (Pretrial Scheduling) Conference scheduled for June 21, 2022, and makes the following findings and orders without needing to consult with the parties any further.

I. SERVICE OF PROCESS

All defendants have been served, and no further service is permitted without leave of court, good cause having been shown under Federal Rule of Civil Procedure 16(b).

1 II. JOINDER OF PARTIES/AMENDMENTS

2 No further joinder of parties or amendments to
3 pleadings will be permitted except with leave of court, good
4 cause having been shown under Federal Rule of Civil Procedure
5 16(b). See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604
6 (9th Cir. 1992).

7 III. JURISDICTION/VENUE

8 Jurisdiction is predicated upon 28 U.S.C. § 1331,
9 because plaintiff pursues a claim under the Americans with
10 Disabilities Act, 42 U.S.C. § 12101, et seq., and upon 28 U.S.C.
11 § 1367(a), because plaintiff's cause of action under state law is
12 predicated upon the same core of operative facts.¹ Venue is
13 undisputed and hereby found to be proper.

14 IV. DISCOVERY

15 The parties agree to serve the initial disclosures
16 required by Federal Rule of Civil Procedure 26(a)(1) on or before
17 June 16, 2022.

18 The parties shall disclose experts and produce reports
19 in accordance with Federal Rule of Civil Procedure 26(a)(2) by no
20 later than March 27, 2023. With regard to expert testimony
21 intended solely for rebuttal, those experts shall be disclosed
22 and reports produced in accordance with Federal Rule of Civil
23 Procedure 26(a)(2) on or before April 3, 2023.

24 All discovery, including depositions for preservation

25 ¹ Defendant disputes that the court has jurisdiction over
26 plaintiff's claims, arguing that plaintiff lacks standing because
27 plaintiff has articulated no definite intentions to return to
28 defendant's business. However, defendant has not filed a motion
to dismiss, whether for lack of standing or otherwise.

1 of testimony, is left open, save and except that it shall be so
2 conducted as to be completed by April 17, 2023. The word
3 "completed" means that all discovery shall have been conducted so
4 that all depositions have been taken and any disputes relevant to
5 discovery shall have been resolved by appropriate order if
6 necessary and, where discovery has been ordered, the order has
7 been obeyed. All motions to compel discovery must be noticed on
8 the magistrate judge's calendar in accordance with the local
9 rules of this court and so that such motions may be heard (and
10 any resulting orders obeyed) not later than April 17, 2023.

11 V. MOTION HEARING SCHEDULE

12 All motions, except motions for continuances, temporary
13 restraining orders, or other emergency applications, shall be
14 filed on or before May 15, 2023. All motions shall be noticed
15 for the next available hearing date. Counsel are cautioned to
16 refer to the local rules regarding the requirements for noticing
17 and opposing such motions on the court's regularly scheduled law
18 and motion calendar.

19 VI. FINAL PRETRIAL CONFERENCE

20 The Final Pretrial Conference is set for July 31, 2023,
21 at 1:30 p.m. in Courtroom No. 5. The conference shall be
22 attended by at least one of the attorneys who will conduct the
23 trial for each of the parties and by any unrepresented parties.

24 Counsel for all parties are to be fully prepared for
25 trial at the time of the Pretrial Conference, with no matters
26 remaining to be accomplished except production of witnesses for
27 oral testimony. Counsel shall file separate pretrial statements,
28 and are referred to Local Rules 281 and 282 relating to the

1 contents of and time for filing those statements. In addition to
2 those subjects listed in Local Rule 281(b), the parties are to
3 provide the court with: (1) a plain, concise statement which
4 identifies every non-discovery motion which has been made to the
5 court, and its resolution; (2) a list of the remaining claims as
6 against each defendant; and (3) the estimated number of trial
7 days.

8 In providing the plain, concise statements of
9 undisputed facts and disputed factual issues contemplated by
10 Local Rule 281(b) (3)-(4), the parties shall emphasize the claims
11 that remain at issue, and any remaining affirmatively pled
12 defenses thereto. If the case is to be tried to a jury, the
13 parties shall also prepare a succinct statement of the case,
14 which is appropriate for the court to read to the jury.

15 VII. TRIAL SETTING

16 The bench trial is set for September 26, 2023, at 9:00
17 a.m. The parties estimate that the trial will last one to three
18 days. As both parties have requested a bench trial, a bench
19 trial will proceed before the court sitting without a jury.²

20 VIII. SETTLEMENT CONFERENCE

21 A Settlement Conference with a magistrate judge will be
22 set at the time of the Pretrial Conference. Counsel are
23 instructed to have a principal with full settlement authority
24 present at the Settlement Conference or to be fully authorized to
25 settle the matter on any terms. At least seven calendar days
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27 ² Defendant previously demanded a jury trial in its
28 answer; however, based on its recent request for a bench trial in
the JSR, defendant appears to have abandoned its jury demand.


1 before the Settlement Conference counsel for each party shall
2 submit a confidential Settlement Conference Statement for review
3 by the settlement judge. The Settlement Conference Statements
4 shall not be filed and will not otherwise be disclosed to the
5 trial judge.

6 IX. MODIFICATIONS TO SCHEDULING ORDER

7 Any requests to modify the dates or terms of this
8 Scheduling Order, except requests to change the date of the
9 trial, may be heard and decided by the assigned Magistrate Judge.
10 All requests to change the trial date shall be heard and decided
11 only by the undersigned judge.

12 IT IS SO ORDERED.

13 Dated: June 9, 2022


14 WILLIAM B. SHUBB
15 UNITED STATES DISTRICT JUDGE
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